



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2004

Mr. Frank Davis
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
700 Preston Commons
8117 Preston Road
Dallas, Texas 75225

OR2004-6371

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206234.

The El Paso School of Excellence (the "school"), which you represent, received a request for (1) a copy of the school's ledger and financial statements for the 2002 and 2003 school years and (2) "receipts, vouchers, itemized expense reports and cash advance receipts for travel expenses incurred during" the 2002 and 2003 school years. You indicate that the school will release some of the requested information. However, you claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also considered arguments submitted by the requestor. See Gov't Code § 552.304.

We begin by noting that the submitted documents contain account numbers that are subject

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

to section 552.136 of the Government Code. The requestor has indicated that she seeks only the last four digits of credit card account numbers contained in the submitted information. Section 552.136 provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access *that alone or in conjunction with another access device* may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We find that the submitted credit card account numbers, including the last four digits of the account numbers, consist of access devices protected from disclosure under section 552.136. The school must, therefore, withhold the account numbers we have marked.²

Next, we address your argument that some of the submitted information is confidential financial information protected under section 552.101 of the Government Code in conjunction with the doctrine of common law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has found that personal financial information generally is excepted from public disclosure under common-law privacy, except to the extent the information reflects a transaction between the employee and the governmental body. Open Records Decision

²Based on this finding, we need not reach your argument that the account numbers are excepted from disclosure under section 552.101 of the Government Code.

Nos. 600 at 9-12 (1992) (information about public employee's participation in a group insurance program, retirement benefits beneficiaries, tax exempt reimbursement accounts, and direct deposit), 545 (1990) (information about a public employee's participation in a deferred compensation plan).

You indicate that the submitted credit card bills were provided to the school for purposes of reimbursement. However, you also contend that the bills contain expenditures for which the school did not reimburse the employee. You have marked the itemized charges in one of the submitted bills for which you contend the individual at issue did not receive reimbursement from the school and contend that this information is private. We agree that the itemized charges you have marked are purely personal and protected under common law privacy to the extent the individual at issue did not seek reimbursement for these charges. However, to the extent the individual sought reimbursement from the school for these charges, we find that the public has a legitimate interest in the information, and therefore the itemized charges are not protected under common law privacy. We have marked additional personal financial information contained in the submitted bills that is protected under common law privacy and must be withheld under section 552.101.

Finally, you contend that some of the submitted information is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the school may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the school must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. The school may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential.

In summary, the school must withhold the account numbers we have marked under section 552.136 of the Government Code. The school must withhold the itemized charges in the submitted credit card bills under section 552.101 of the Government Code in conjunction with common law privacy to the extent that the individual at issue did not seek reimbursement from the school for those charges. If the individual did seek reimbursement for the charges, the school must release that information. The school must withhold additional personal financial information we have marked under section 552.101 in conjunction with common law privacy. Finally, the school must withhold the marked personal information of school employees under section 552.117(a)(1) to the extent the

employees timely elected to keep this information confidential. The school must release the remainder of the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).


If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge

this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan E. Bowden". The signature is fluid and cursive, with the first name "Nathan" being more prominent.

Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/jh

Ref: ID# 206234

Enc: Submitted documents

c: Ms. Elizabeth O'Hara
6004 N. Mesa
El Paso, Texas 79912
(w/o enclosures)